

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

In the matter of:

**REPUBLIC DUMPCO, INC.,
REPUBLIC SILVER STATE
DISPOSAL, INC., d/b/a/ REPUBLIC
SERVICES OF SOUTHERN
NEVADA,**

Respondents

)
)
) **U.S. EPA Docket No.**
) **7003-09-2008-0002**

) **Proceeding Under §7003 of the**
) **Resource Conservation and Recovery Act,**
) **as amended, 42 U.S.C. §6973**
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**SUNRISE MOUNTAIN LANDFILL SITE
UNILATERAL ADMINISTRATIVE ORDER
DATED JUNE 6, 2008**

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Appendix A - Scope of Work

I. JURISDICTION, PROCEDURE AND PURPOSE

1. The United States Environmental Protection Agency ("EPA") issues this Unilateral Administrative Order (hereinafter "Order") regarding the Sunrise Mountain Landfill Site ("Site") to the following Respondents: Republic Dumpco, Inc., and Republic Silver State Disposal, Inc., d/b/a Republic Services of Southern Nevada (hereinafter collectively "Respondents" or "Republic"). This Order is issued pursuant to the authority vested in the Administrator of EPA by Section 7003 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §6901 et seq. ("RCRA"), which authority has been duly delegated to the Regional Administrator of EPA, Region IX, and re-delegated to the Director of the Waste Management Division ("Director"). Notice of this Unilateral Administrative Order has been provided to the State of Nevada, Nevada Division of Environmental Protection ("NDEP"), as required by Section 7003(a) of the Act, 42 U.S.C. §6973(a).
2. The purpose of this Order is to address an ongoing imminent and substantial endangerment at the Site and require implementation of a subset of the actions described in the Scope of Work ("SOW") provided as Appendix A. This Order supersedes and terminates EPA Order Docket No. RCRA-7003-09-99-0005 issued April 26, 1999.

II. PARTIES BOUND

3. This Order shall apply to and be binding upon the Respondents identified above and their directors, officers, employees, agents, successors and assigns and upon all other persons and entities who are under the direct or indirect control of Respondents (including, but not limited to, any contractors or independent agents or consultants acting under or for Respondents) until such time as the Work to be Performed under Section VI has been completed or until this order Terminates pursuant to Section XXI of this Order.
4. No change in the ownership or corporate, partnership or legal status of Respondents or of the Site or any portion of the Site will in any way alter Respondents' obligations and responsibilities under the Order.
5. Respondents shall provide a copy of the Order, and all other documents approved under or pursuant to the Order that are necessary to conduct the Work to each contractor, sub-contractor, laboratory, or consultant retained to perform any Work under this Order pursuant to a contract with a value of \$100,000 or more, within five (5) days after the Effective Date of this Order or on the date such services are retained, whichever date occurs later. Respondents shall also provide a copy of the Order to each person representing the Respondents with respect to the Site or the Work and shall condition all contracts and subcontracts entered into hereunder upon performance of the Work in

conformity with the terms of this Order. Notwithstanding the terms of any contract, Respondents are responsible for compliance with the Order and for ensuring that its contractors, sub-contractors and agents comply with the Order, and perform all Work in accordance with the Order.

6. At all times after service of the Order, Respondents shall provide a copy of the Order to any prospective owners or successors before a controlling interest in Respondents' assets, property rights or stock are transferred to the prospective owner or successor. The Respondents shall notify EPA no later than seven (7) days prior to such transfer.

III. FINDINGS OF FACT

7. The Site is a municipal landfill, located in Clark County, Nevada, three miles from the city limits of Las Vegas. The Site accepted waste from approximately the early 1960's until at least October 1993. Some units may have continued to accept waste after this date. The nearest residences are located approximately one mile from the western facility boundary and Las Vegas High School is one and one quarter miles northwest of the Site. The landfill is unlined and contains approximately 18 million tons of waste in place, including municipal solid waste, medical waste, sewage sludge, hydrocarbon-contaminated soils, asbestos, and construction and demolition waste. The Site is located approximately two miles upgradient from Las Vegas Wash, which discharges directly into Lake Mead. Lake Mead is a primary drinking water source for southern Nevada, including the Las Vegas Metro Area, as well as the Phoenix Metro Area and southern California.
8. The Site is located on property owned by the United States Bureau of Land Management ("BLM"). On May 21, 1962, Clark County Public Works ("CCPW") leased 320 acres from BLM with an additional 400 acres leased by CCPW on May 21, 1985. The areas comprising the Site are illustrated on the map provide as Attachment 1 to the SOW and include the 720 acres leased by CCPW as well as other areas where solid waste has been placed or otherwise come to be located, including the Northeast Canyon Area, the Eastern Perimeter Area, the Southern Wash Area, and the Western Burn Pit Area (the Black Lagoons).
9. Respondents are former and/or current operators of the Site with responsibility for proper closure of the Site. Following initial efforts by Respondents and/or their predecessors in interest to close the Site in 1995, problems with the closure were observed by BLM and EPA.
10. In August 1995, BLM inspected the Site and observed uncovered medical waste in the vicinity of a failed drainage structure. In a letter dated September 5, 1995, BLM

identified serious concerns with surface water structures and the thickness of the final cover, even after some corrective measures were taken by CCPW.

11. On November 13, 1997, Dynamac Corporation, under contract with BLM, issued an independent review of the Site closure in a document titled *Sunrise Mountain Landfill Final Cover Evaluation*. This Dynamac report identified serious inadequacies for the surface water run-off, landfill cover, gas emissions, gas monitoring, groundwater monitoring, and leachate collection at the Site. The report concluded (1) the drainage system was inadequate to control surface water run-off, (2) the landfill cover did not meet the requirements of 40 C.F.R. Part 258 and did not minimize erosion or the infiltration of liquids and leachate generation, (3) methane gas in one area exceeded the lower explosive limit, and (4) gas and groundwater monitoring were insufficient.
12. The *Sunrise Mountain Landfill Final Cover Evaluation* evaluated the landfill cover on both the 180 acres covered under the closure plan as well as the remaining acreage. The report states that the cover thickness was inadequate and the hydraulic conductivity exceeded the maximum allowable limit necessary in all areas. Excessive cracking and substantial erosion of the cover were also documented. The report concluded that the existing landfill cover should be considered no more than an intermediate cap and that a final cover would be needed. The report also noted that significant surface water infiltration was occurring and that groundwater monitoring would be required to detect contaminant migration through leachate at the landfill.
13. On March 18, 1998, BLM issued a report entitled *Reconnaissance Investigation of the Sunrise Landfill*. The report described uncovered waste observed in three lagoon areas and in various cracks, vents and gullies on the landfill surface as well as the presence of hydrogen sulfide (H_2S) exceeding 2000 parts per million ("ppm") in some soil gas samples. Hydrogen sulfide is a colorless, flammable, poisonous gas with the characteristic odor of rotten eggs. The Immediately Dangerous to Life and Health (IDLH) limits (NIOSH 1997) for hydrogen sulfide are 100 ppm over a period of 30 minutes and 800 ppm is instantaneously fatal. At lower levels, hydrogen sulfide can irritate the eyes, throat and respiratory tract producing cough, headache, nausea and vomiting. Prolonged exposures can produce life-threatening pulmonary edema (fluid flooding of the lungs).
14. During August 1998, Clark County sampling of hydrogen sulfide found levels of up to 540 ppm in ambient air. This level is well above the 25 ppm Permissible Exposure Limit "PEL." After one or two breaths of exposure in the 150 ppm range, olfactory fatigue can set in and the odor warning property of H_2S is lost.
15. On September 11, 1998, several large rain events resulted in the washout of portions of the Site and the discharge of solid waste into tributaries that feed into the Las Vegas Wash.

16. On September 12, 1998, NDEP observed significant erosion in a number of areas at the Site and severe damage to the major drainage channel. The waste cell containing construction and demolition debris, including some asbestos-containing material, was cut open. NDEP found that many drainage structures were either eroded or filled with sediment.
17. On November 19 and 20, 1998, EPA conducted an inspection of the landfill. EPA coordinated the inspection with NDEP and the Clark County Health District. Visual observations of the Site indicated that the September 1998 storm event severely compromised the integrity of the landfill cover and the stormwater run-on/run-off system. EPA inspectors observed exposed trash, including tires, debris, and metal protrusions throughout the Site, in the area directly over the edge of a drainage channel that leads into the Las Vegas Wash, and for approximately one-half mile into the tributary. In addition, facility representatives stated that a combination of garbage and gravel in the tributary area represented typical conditions for approximately two miles, the length of the tributary to the Las Vegas Wash. EPA also observed exposed medical waste and syringes in the southern portion of the Site. In this same area, prominent gullies that flow towards the Las Vegas Wash also contained significant amounts of trash. Items resembling medical waste (small plastic cylinders, tubing, and rectangular plastic receptacles) were observed in the gullies beyond the southern perimeter of the landfill. A strong rotten egg smell was present, indicating presence of hydrogen sulfide.
18. During the November 1998 inspection, EPA representatives also conducted an evaluation of an open dump in the northeast canyon area (see Appendix A, Attachment 1). EPA representatives observed evidence of significant ponding, municipal garbage, and exposed, uncontrolled sewage sludge. EPA inspectors observed a substantial quantity of uncovered trash and debris, including 55-gallon drums embedded in the sediment. EPA observed that trash from this area flowed into the main diversion channel to the Las Vegas Wash after the September 1998 storm event.
19. On September 18, 1998, Desert Research Institute ("DRI") inspected the Site and observed two groundwater discharge seeps in addition to springs at the Site. Samples collected from the spring closest to the Site contained elevated levels of nitrates and selenium exceeding the maximum concentration limit ("MCL"). DRI also observed inadequacies in landfill cover construction and the management of stormwater discharges. Elevated nitrates in the springs may be indicators of landfill leachate discharging to the surface. DRI stated that the seeps and springs indicate infiltration into the landfill.
20. An EPA review of documents identified at least five storm events since 1995 which resulted in problems similar to those caused by the September 1998 storm event. Other rainfall events caused discharge of solid waste from the Site on, but not limited to, the following dates: May and June 1995, July 1996, November 1996, February through April 1997, September and October 1997, and June and July 1998. Erosion, debris and

ponding resulted from rain events during May and June 1995. Photographs dated June 7, 1995, depict exposed medical waste, solid waste exposed by erosion, massive failure of the surface water control system, damage to the berm around the major culvert, waste adhering to native vegetation in the major drainage ditch approximately 400 yards from a cell, and erosion throughout the Site and on the slope of the asbestos cell. Release of debris also resulted from storm events in July 1996. Erosion was increased as a result of rain events in November 1996. Erosion, rilling and ponding were caused by rain events from February through April 1997. Erosion, fissures, settlement of the landfill cover areas and exposure of wastes resulted from rain events in September and October 1997. Erosion and exposure of asbestos resulted from rain events in June and July 1998.

21. The Las Vegas Wash is the surface water outlet for the Las Vegas Metropolitan area, one of the fastest growing urban areas in the United States. The Wash transports stormwater run-off, shallow groundwater discharge, and tertiary-treated sewage effluent from the Las Vegas area to Las Vegas Bay, into Lake Mead, and in turn, to the Colorado River. The Las Vegas Wash contains a variety of aquatic species, including crayfish, carp, bass, and blue fish. The razor back sucker, southwestern fly catcher and the yuma clapper rail, all listed as endangered pursuant to the Endangered Species Act of 1973, are found at the Wash.
22. Solid waste in surface water is harmful because it may lead to an increase in nitrate nitrogen, a decrease in dissolved oxygen, and increased levels of potentially harmful microorganisms, such as bacteria and other pathogens. High concentrations of nitrate can contribute to excessive growth of aquatic plants, depletion of oxygen, fishkills, and general degradation of aquatic habitats. Sufficient dissolved oxygen is critical to aquatic biota. Solid waste may contain infectious wastes, typically animal or human fecal waste (bacteria, protozoa, and other pathogens) and bloodborn pathogens from medical wastes (viruses, bacteria, fungus, yeast). Solid waste discharged into Las Vegas Wash may impact aquatic and avian species and may carry infectious and bloodborn pathogens into Lake Mead.
23. Methane is one of the major constituents of landfill decomposition gas. Methane gas may pose a serious explosive hazard. Landfill gas not properly vented may result in groundwater contamination
24. To restrict access, CCPW posted signs around the Site at points of entry and BLM published a notice in the *Federal Register*. However, EPA's observations at the Site showed evidence of trespassers on foot and in motorized vehicles. Construction workers were also present at the Site.
25. On October 5, 1998, NDEP issued a Finding of Violation and Order to CCPW and Republic Silver State Disposal, Inc. to evaluate the adequacy of the stormwater diversion system at the Site, including recommendations for improving or modifying the design. In

letters dated January 28, 1999 and March 24, 1999, NDEP determined that plans submitted by Republic Silver State Disposal, Inc. were incomplete and inadequate.

26. On October 6, 1998, Clark County Health District issued a Corrective Action Order to CCPW and Republic Dumpco, Inc. as well as to BLM requiring these parties to review erosion/run-off control structures, document the proper disposal of wastes removed from existing cells, from off Site dry washes and the Las Vegas Wash, and submit plans for changes to the erosion/run-off structures and the landfill cells. On November 6, 1998, Republic Dumpco, Inc. submitted a plan for a stormwater design system. On November 25, 1998, Clark County Health District found the submission insufficient.
27. On October 16, 1998, NDEP issued a Finding of Violation and Order to CCPW and Republic Silver State Disposal to install and sample groundwater monitoring wells at the Site. NDEP stated that previous proposals by these parties to install and sample monitoring wells have been "completely unacceptable." On October 16, 1998, Republic Silver State Disposal filed an appeal from the Order with the Nevada Environmental Commission. On December 2, 1998, Republic Silver State Disposal submitted a groundwater monitoring plan which they agreed to implement only under certain conditions. CCPW submitted a groundwater monitoring plan which, on March 11, 1999, NDEP determined was adequate only to provide baseline monitoring.
28. On April 26, 1999, EPA issued RCRA Order No. RCRA-7003-09-99-0005. Since the issuance of the April 26, 1999 RCRA Section 7003 Order by EPA, Respondents have implemented response actions including construction of a gas extraction systems, installation of groundwater monitoring wells, some drainage improvements and regrading of the cover. EPA also issued a parallel order that dealt with Clean Water Act violations on April 26, 1999.
29. Despite some interim actions, Respondents have failed to (1) implement surface drainage controls that would minimize erosion during major storm events, (2) improve the cover to address threats of erosion and infiltration, and (3) failed to install an adequate groundwater monitoring system.
30. Additional actions identified in the attached SOW, Appendix A, are needed to address the endangerment from the Site, including preventing the release of waste from the Site and preventing flux, which may carry contaminants to groundwater as the landfill ages.

IV. CONCLUSIONS OF LAW AND DETERMINATION

Based on the Findings of Fact set forth above, EPA has concluded and determined that:

31. Respondents are each a corporation organized under the laws of the State of Nevada and are or were wholly-owned subsidiaries of Republic Services, Inc. Republic has been operating the Site from August 1997 through the present, and Respondents are each an entity that meets the definition of a "person" pursuant to Section 1004(15) of the Act, 42 U.S.C. §6903(15).
32. The trash, debris, containers, asbestos, sewage sludge, and other substances described in Section III., above are "hazardous wastes" and/or "solid wastes" as defined by Section 1004 of RCRA, 42 U.S.C. § 6903, which may present an imminent and substantial endangerment to health or the environment under Section 7003 of RCRA, 42 U.S.C. § 6973.
33. Respondents' failure to adequately close and maintain the Site to minimize soil erosion, leachate to groundwater, and run-on and run-off of stormwater presents or may present an imminent and substantial endangerment to health or the environment under Section 7003 of RCRA, 42 U.S.C. §6973.
34. The past or present handling, storage, treatment, transportation or disposal of "hazardous wastes" and/or "solid wastes" as defined by Section 1004 of RCRA, 42 U.S.C. §6903 by Respondents, as described above may present an imminent and substantial endangerment to health or the environment under Section 7003 of RCRA, 42 U.S.C. §6973.
35. Respondents are liable under Section 7003 of RCRA, 42 U.S.C. §6973, because they have contributed and/or are contributing to the handling, storage, treatment, transportation or disposal of solid waste and/or hazardous waste at the Site.
36. Respondents are liable under Section 7003 of RCRA, 42 U.S.C. § 6973, to take all necessary corrective action with respect to the Sunrise Landfill, in order to abate such imminent and substantial endangerment.
37. Based on the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW, on the Administrative Record, and upon evidence and information that the past or present handling, storage, treatment, transportation or disposal of solid waste by Respondents at the Site may present an imminent and substantial endangerment to health or the environment, EPA has determined that issuance of this Order is necessary to protect public health and the environment.

ORDER

Based on the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW**, the administrative record, and the foregoing determination, it is hereby **ORDERED** that:

Respondents shall fully cooperate with EPA and its authorized representatives in carrying out all provisions of this Order, including the taking of all actions set forth in Section VI, Work to be Performed, and meeting all other requirements of this Order.

V. DEFINITIONS

38. Unless otherwise expressly provided herein, terms used in the Amended Order which are defined in 42 U.S.C. §6903 and/or 40 C.F.R. Part 258, shall have the meaning assigned to them in that statute and/or its implementing regulations.
39. "Administrative Record" shall mean the documents that were considered and/or relied upon by EPA in selecting the actions documented in the SOW and which may be viewed at EPA Region IX's Superfund Record Center, located at 95 Hawthorne St., San Francisco, CA 94105, as arranged by EPA's Project Coordinator or Alternate Project Coordinator.
40. "Days" shall mean calendar days unless otherwise specified.
41. "Respondents" shall mean Republic Dumpco, Inc. and Republic Silver State Disposal Inc. d/b/a Republic Services of Southern Nevada.
42. "Scope of Work" or "SOW" shall mean the description of required tasks and specifications provided as Appendix A, which is hereby incorporated by this reference.
43. "Site" shall mean the Sunrise Mountain Landfill, as identified in Appendix A, including the 720 acres leased by CCPW as well as other areas where solid waste has been placed or otherwise come to be located, including the Northeast Canyon Area, the Eastern Perimeter Area, the Southern Wash Area, and the Western Burn Pit Area (the Black Lagoons) (see Appendix A, Attachment 1).
44. "Work" shall mean those requirements set forth in Section VI herein (Work to Be Performed).
45. "Working Days" shall mean the days of the week excluding Saturday, Sunday and Federal Holidays.

VI. WORK TO BE PERFORMED

46. Respondents are ordered to perform the Work and make submittals and certifications as set forth below within the time schedules specified in Attachment 2 to the SOW. All days specified below are consecutive calendar days from the Effective Date of this Order. Due dates falling on a Saturday, Sunday, or Federal Holiday will be automatically extended to the next Working Day.
47. Respondents shall perform all of the Tasks from the SOW listed in this paragraph, within the time periods and in the manner prescribed by the SOW and as required by this Order, up to \$6.7 million of appropriate expenditures on Work pursuant to EPA approved work plans. These initial actions are intended to expedite stabilization of the Site. EPA intends to require full implementation of the remaining tasks in the SOW pursuant to another enforcement mechanism.

Task List from Appendix A - SOW:

(All explanations and definitions provided in Appendix A remain applicable.)

3.0 WORK PLAN DEVELOPMENT, IMPLEMENTATION AND REPORTING

- Task 3.1. Health and Safety Plan ("HASP")
- Task 3.2. Sampling and Analysis Plans
 - Task 3.2.1. Sampling and Analysis Plan ("SAP")
 - Task 3.2.2. Storm Water Monitoring Plan ("SWMP")
- Task 3.3. Construction Quality Assurance Plan ("CQAP")
- Task 3.4. UAO Project Workplan and Project Schedule
 - Task 3.4.1. UAO Project Workplan
 - Task 3.4.2. Project Schedule for All Tasks
 - Task 3.4.3. Implementation of UAO Project Workplan
- Task 3.5. Monthly Progress Reports
- Task 3.6. Monthly Technical Compliance Meetings/Teleconferences
- Task 3.7. Communications

4.0 CORRECTIVE ACTION AND STORM WATER CONTROL TASKS

- Task 4.1. Final Cover Corrective Measures Workplan
(design, but not implementation)
- Task 4.2. Gas Monitoring and Corrective Action Workplan
(design but not implementation)
- Task 4.3. Groundwater Monitoring Workplan and Implementation
 - Task 4.3.1. Develop a Groundwater Monitoring Workplan
 - Task 4.3.2. Low Flow and Turbidity Reduction Sampling Procedure
 - Task 4.3.3. Water Level Gaging
 - Task 4.3.4. Additional Groundwater Monitoring Well Development Workplan
 - Task 4.3.5. Groundwater Sampling, Analysis and Reporting
 - Task 4.3.7. Groundwater Monitoring Workplan Implementation

- Task 4.4 Storm Water Control Workplan and Implementation
 - Task 4.4.1. Develop and implement a Storm Water Pollution Prevention Plan
 - Task 4.4.2. Complete the Storm Water Control Workplan
 - Task 4.4.3. Continue Inspections and Reports
 - Task 4.4.4. Surface Seeps
 - Task 4.4.5. Maintain SWPPP Records
 - Task 4.4.6. Report Storm Water Discharge
 - Task 4.4.8. Debris Inspection and Removal
 - Task 4.4.9. Reporting on Implementation and Compliance
 - Task 4.4.10. Implementation of Storm Water Control Workplan
48. All contractors, transporters and treatment, storage, disposal or recycling facilities used or proposed for implementation of the Work are subject to EPA approval.
49. Any noncompliance with the Work or the schedules set forth within this section shall be considered a violation of this Order.
50. In case of any conflict between this Order and the SOW, this Order shall control.
51. Respondents shall perform all Work pursuant to this Order and the SOW in a manner consistent with an approved Clean Diesel Workplan to be submitted within one hundred and twenty (120) days of the Effective Date. The Workplan shall specify that Respondents, including their contractors and subcontractors, will mitigate the potential health risks associated with diesel exhaust by applying clean diesel technologies, clean fuels and/or clean construction practices on all diesel powered engines greater than 25 horsepower that will be used on the Sunrise Mountain Landfill Project Site ("the Site") for more than fourteen days. Republic should consult EPA's Smart Energy Resource Guide at <http://www.epa.gov/nrmrl/pubs/600r08049/600r08049.htm> in order to propose appropriate mitigation measures in the Clean Diesel Work Plan.

VII. NOTICES AND SUBMISSIONS

52. Whenever, under the terms of the Amended Order, written notice is required to be given or a report or other document is required to be submitted to EPA, it shall as a minimum, be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the Respondents in writing. Respondents shall also provide any additional copies and recipients to the extent specified in the SOW. All notices and submissions shall be sent by email and either certified mail, return receipt requested or overnight mail, unless otherwise specified in writing. Submission shall be effective upon receipt, unless otherwise provided herein.

Steve Wall, Project Coordinator (two hard copies of each submittal)
U.S. EPA Region 9
75 Hawthorne Street (WST-7)
San Francisco, CA 94105-3901
wall.steve@epa.gov
(415) 972-3381 (telephone)
(415) 947-3530 (facsimile)

Ann Murphy, Alternate Project Coordinator (copy via email, no hard copy)
U.S. EPA Region 9
75 Hawthorne Street (WST-7)
San Francisco, CA 94105-3901
murphy.ann@epa.gov
(415) 972-3640 (telephone)
(415) 947-3553 (facsimile)

Mike Moran (Copy via email and one hard copy)
Bureau of Land Management Las Vegas Field Office
4701 North Torrey Pines Drive
Las Vegas, NV 89130-2301
mmoran@nv.blm.gov
(702) 515-5053 (telephone)
(702) 515-5023 (facsimile)

VIII. APPROVALS/DISAPPROVALS

53. After review of any deliverable, plan, report, or other item which is required to be submitted for review and approval pursuant to this Order, EPA may: (a) approve the submission; (b) approve the submission with modifications; (c) disapprove the submission and direct Respondents to re-submit the document after incorporating EPA's comments; or (d) disapprove the submission. As used in this Order, the terms "approval by EPA," "EPA approval" or a similar term means the actions described in clauses (a) or (b) of this paragraph.
54. In the event of approval or approval with modifications by EPA, Respondents shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA.
55. Upon receipt of a notice of disapproval or a request for a modification, Respondents shall, within seven (7) days or such longer time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval or approval

with modifications, Respondents shall proceed, at the direction of EPA, to take the actions required by any non-deficient portion of the submission.

56. If any submission is not approved by EPA after re-submission in accordance with the immediately preceding paragraph, Respondents shall be deemed in violation of the provision of this Order requiring Respondents to submit such plan, report or item.
57. Any deliverables, plans, reports or other item required by this Order to be submitted for EPA review and approval are, upon approval of EPA, incorporated into this Order and enforceable hereunder.

IX. ACCESS TO PROPERTY NOT OWNED BY RESPONDENTS

58. To the extent the Site, any off-Site area that is to be used for access, any property where documents required to be prepared or maintained by the Order are located, or other property subject to or affected by the clean-up, is owned or leased in whole or in part by parties other than those bound by the Order, Respondents shall use their best efforts to obtain access agreements from the present owner(s) and/or lessees. Such efforts must be made within thirty (30) days of the Effective Date of the Order, if the need for access is known as of the Effective Date of the Order, or, if not known as of the Effective Date of the Order, within thirty (30) days of EPA approval of any work plan, report or document pursuant to this Order that requires Work on such property. "Best efforts" as used in this paragraph shall include, at a minimum, but shall not be limited to: (a) certified letter(s) from Respondents to the present owner(s) and/or lessee(s) of the property requesting access agreements to permit Respondents, EPA and their authorized representatives access to such property; and (b) the payment of reasonable compensation in consideration for such access.
59. All access agreements entered into pursuant to this Section shall provide access for EPA, its contractors and oversight officials, the state and its contractors and Respondents and Respondents' authorized representatives and contractors. Such agreements shall specify that Respondents are not EPA's representative with respect to liability associated with Site activities. Respondents shall save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action or other costs incurred by the United States including but not limited to attorneys fees and other expenses of litigation and settlement arising from or on account of acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to the Order. Copies of such agreements shall be provided to EPA prior to Respondents' initiation of field activities.

60. If access agreements are not obtained within the time set forth above, Respondents shall immediately notify EPA, in writing, of their failure to obtain access, specifying the efforts undertaken to obtain access. Subject to the United States' nonreviewable discretion, EPA may elect to use its legal authorities to obtain access as necessary for implementation of response actions to be taken pursuant to the Order. EPA may also perform those response actions with EPA contractors at the property in question, or may terminate the Order if Respondents cannot obtain access agreements. If EPA performs those tasks or activities with contractors and does not terminate the Order, Respondents shall perform all other activities not requiring access to that property, and shall reimburse EPA to the full extent allowed by law for all response costs incurred in performing such activities. Respondents shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

X. ACCESS TO SITE AND DATA/DOCUMENT AVAILABILITY

61. Respondents shall allow EPA and its authorized representatives and contractors to enter and freely move about the Site at all reasonable times for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site, related to Respondents and their representatives or contractors activities pursuant to this Order; reviewing the progress of the Respondents in carrying out the terms of this Order; conducting tests as EPA or its authorized representatives or contractors deem necessary; using a camera, sound recording device or other documentary type equipment; verifying the Work, including the data submitted to EPA by Respondents, and copying all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out the Order. Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under federal law.
62. Respondents may assert a business confidentiality claim covering all or part of the information submitted to EPA pursuant to the terms of this Order in the manner prescribed by 40 C.F.R. §2.203(b) to the extent such claim is not inconsistent with any other provisions of law. Any assertion of confidentiality shall be adequately substantiated by the Respondents making the claim when the assertion of confidentiality is made, in accordance with 40 C.F.R. §2.204(e). Information subject to a confidentiality claim shall be disclosed only to the extent and by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such confidentiality claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to the Respondents making the claim. Respondents shall not assert any business confidentiality claim with regard to Site conditions or any physical, sampling, monitoring or analytical data.

63. Respondents shall maintain for the period during which the Order is in effect an index of documents that Respondents claim contain confidential business information. The index shall contain, for each document, the date, author, addressee, and subject of the document. Upon written request from EPA, Respondents shall submit a copy of the index to EPA.

XI. ENDANGERMENT AND EMERGENCY RESPONSE

64. In the event Respondents identify a current or immediate threat to human health or the environment, Respondents shall immediately notify the EPA Project Coordinator (or if, not available, the Alternate Project Coordinator) by telephone. If neither of these persons is available, Respondents shall immediately notify EPA Region IX Emergency Response Section by calling (800) 300-2193. In addition to notification by telephone, written notification shall be made to EPA as prescribed in this Order (Section VII, Notices and Submissions) within twenty-four (24) hours of first obtaining knowledge of the threat, summarizing the immediacy and magnitude of the current or immediate threat to human health and the environment. Respondents shall take immediate action to prevent, abate, or minimize the threat in consultation with EPA's Project Coordinator and in accordance with all applicable provisions of this Order. Respondents shall thereafter submit for EPA approval a plan to mitigate the threat, as soon as possible, but no later than five (5) days after identification of the threat. EPA will approve or modify the plan, and Respondents shall implement the plan as approved or modified by EPA. In the event that Respondents fail to take appropriate response action as required by this Section, and EPA takes that action instead, Respondents shall reimburse EPA for all costs of the response action to the full extent allowed by law.
65. If EPA determines that any action or occurrence during the performance of the Work causes or threatens to cause a release or disposal of hazardous substances, pollutants or contaminants, regulated substances or hazardous or solid wastes that may present an imminent and substantial endangerment to the public health or welfare or the environment, EPA may direct Respondents to undertake any action EPA determines is necessary to abate such disposal or release or threatened release and/or direct Respondents to cease activities Respondents are then undertaking pursuant to the Order for such time as may be needed to abate any such disposal or release or threatened release.
66. Nothing in this Section shall be deemed to limit any authority of the United States to take, direct or order all appropriate action to protect human health and the environment or to prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, regulated substances or hazardous or solid wastes at or from the Site.

XII. RECORD PRESERVATION

67. Respondents shall upon request provide to EPA copies of all documents and information within its possession and/or control or that of its contractors, employees or agents relating to activities at the Site or to the implementation of this Order, including but not limited to sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents shall also make available to EPA for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.
68. Until five (5) years after termination of the Order, Respondents shall preserve and retain all records and documents in its possession or control, including the documents in the possession or control of its contractors, employees or agents that relate in any manner to the Site and/or the Work, including but not limited to records, documents or other information relating to its potential liability with regard to the Site. At the conclusion of this document retention period, Respondents shall notify the United States at least ninety (90) calendar days prior to the destruction of any such records or documents, and upon request by the United States, shall deliver all such documents, records and information to EPA.
69. Upon submitting documents to EPA, Respondents may assert confidentiality claims pursuant to 40 C.F.R. Part 2. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted to the EPA, the public may be given access to such information without further notice to Respondents.

XIII. PROJECT COORDINATORS

70. Within five (5) days after the Effective Date of the Order, Respondents shall designate a Project Coordinator for the Work for which it is responsible and shall submit the name, address, and telephone number of the Project Coordinator to EPA for review and approval. Respondents' Project Coordinator shall be responsible for overseeing Respondents' implementation of the Order. If Respondents wish to change their Project Coordinator, Respondents shall provide written notice to EPA, five (5) days prior to changing the Project Coordinator, of the name and qualifications of the new Project Coordinator.
71. EPA hereby designates Steve Wall as EPA's Project Coordinator for this Order. EPA hereby designates Ann Murphy as EPA's Alternate Project Coordinator. EPA has the

unreviewable right to change its Project Coordinator and/or Alternate Project Coordinator. If EPA changes its Project Coordinator or Alternate Project Coordinator, EPA will inform Respondents in writing of the name, address, and telephone number of the new Project Coordinator or Alternate Project Coordinator.

72. The EPA Project Coordinator will be EPA's primary designated representative for the Site. To the maximum extent possible, all communications, whether written or oral, between Respondents and EPA concerning the Work to be performed pursuant to the Order shall be directed through the Project Coordinator. In the event that the EPA Project Coordinator is not available, Respondents shall contact EPA's Alternate Project Coordinator.

XIV. QUALITY ASSURANCE, SAMPLING, DATA ANALYSIS AND PRIOR NOTICE OF FIELD ACTIVITIES

73. Respondents shall comply with the quality assurance and quality control requirements described in *EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations* (EPA QA/R-5, August 1994). In addition, Respondents shall plan for the collection of environmental samples and conduct all sample collection and analysis activities required under this Order consistent with *Guidance for the Data Quality Objectives Process*, (EPA QA/G-4, September 1994), *Preparation of a U.S. EPA Region 9 Field Sampling Plan for Private and State-Lead Superfund Projects*, (9QA-06-03, August, 1993) and *Test Methods for Evaluating Solid Waste*, (SW-846, January 1995) and any amendments to these documents. To provide quality assurance and maintain quality control, Respondents shall:

(a) use only laboratories which have a documented Quality Assurance Program that meets the quality assurance and quality control requirements specified in current EPA guidance,

(b) ensure that the laboratories used by Respondents perform analyses according to a method or methods consistent with current EPA guidance. If methods other than those in SW-846 are proposed for use, Respondents shall submit all proposed protocols accompanied by an appropriate justification and a demonstration of the effectiveness and applicability of the proposed alternative to EPA for approval at least thirty (30) days prior to the commencement of analysis and shall obtain EPA approval prior to the use of such protocols, and

(c) ensure that EPA personnel and EPA's authorized representatives are allowed access to the laboratory and personnel utilized by Respondents for analyses.

74. Respondents shall notify both EPA's Project Coordinator and EPA's Alternate Project Coordinator by email at least three (3) Working Days before engaging in any Work at the

Site pursuant to the Order. At the request of EPA, Respondents shall provide or allow EPA or its authorized representatives to draw split or duplicate samples of all samples collected by Respondents with regard to this Site or pursuant to this Order. Nothing in this Order shall limit or otherwise affect EPA's authority to draw samples pursuant to applicable law, including, but not limited to, RCRA, Clean Water Act, 33 U.S.C. section 1251 et seq. ("CWA") and the Comprehensive Emergency Response Compensation and Liability Act, 42 U.S.C. section 6901 et seq. ("CERCLA").

75. Respondents shall submit to EPA the results of all sampling and/or tests and other data generated by, or on behalf of, Respondents, in accordance with the requirements of the Order.

XV. DELAY IN PERFORMANCE

76. Any delay in performance of the Order requirements that, in EPA's judgment, is not properly justified by Respondents under the terms of this paragraph shall be considered a violation of the Order. Any delay in performance of the Order shall not affect Respondents' obligations to fully perform all obligations under the terms and conditions of the Order.
77. Respondents shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone and email to EPA's Project Coordinator and Alternate Project Coordinator within twenty-four (24) hours after Respondents first know or should have known that a delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within two (2) Working Days after notifying EPA by telephone, EPA shall be provided with written notification fully describing the nature of the delay, any justification for the delay, any reason why Respondents should not be held strictly accountable for failing to comply with any relevant requirements of the Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effects of the delay. Increased costs or expenses associated with implementation of the activities called for in the Order shall not be a justification for any delay in performance.

XVI. RESERVATION OF RIGHTS, NON-WAIVER, COMPLIANCE WITH LAWS AND ENFORCEMENT

78. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, remedies and defenses, both legal and equitable, including the right to disapprove Work performed by Respondents pursuant to the Order, to perform any portion of the Work required herein and to require that Respondents perform tasks in addition to those required by the Order

pursuant to RCRA, CWA, CERCLA or other applicable legal authority. EPA reserves its right to seek reimbursement from Respondents for such costs incurred by the United States to the full extent allowed by law. The Order shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA, CWA, CERCLA or any other statutory, regulatory or common law enforcement authority of the United States.

79. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondents' failure to comply with any of the requirements of this Order, including without limitation, the assessment of penalties under Section 7003 of RCRA, 42 U.S.C. §6973. Nothing in this Order shall limit or preclude EPA from taking any additional enforcement actions, including modification of the Order or issuance of additional orders or amendments, or from requiring Respondents in the future to perform additional activities pursuant to any other applicable law or regulation, and/or from taking additional actions as EPA may deem necessary at the Site.
80. All activities by Respondents pursuant to this Order shall be performed in accordance with the requirements of all applicable federal, State and local laws and regulations.
81. This Order is not, and shall not be construed as a permit issued pursuant to any federal, State or local statute or regulation. Compliance by Respondents with the terms of the Order shall not relieve Respondents of their obligations to comply with RCRA or any other applicable federal, State or local laws, regulations and permits. Respondents shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.
82. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under Section 3007 of RCRA, 42 U.S.C. §6927 and any other applicable statutes or regulations.
83. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, entity or corporation for any liability such person, firm, partnership, entity or corporation may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, regulated substances, pollutants, or contaminants found at, taken to, or taken from the Site.
84. If a court issues an order that invalidates or stays any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of the Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XVII. OPPORTUNITY TO CONFER

85. Respondents have the opportunity to confer with and/or submit information to EPA concerning the validity of this Order, including the basis for the Order, the terms of the Order, and the applicability of the Order to Respondents. Within ten (10) days after receipt of this Order, Respondents may request a compliance conference regarding the Order. EPA shall deem a failure to request a compliance conference as a waiver of the opportunity to confer. If Respondents desire a compliance conference, Respondents shall contact Laurie Williams, Assistant Regional Counsel, at US EPA Office of Regional Counsel (ORC-3), 75 Hawthorne Street, San Francisco, CA 94105-3901, or williams.laurie@epa.gov. Respondents may also contact Ms. Williams at (415) 972-3867.
86. If Respondents request a conference it shall occur prior to the Effective Date, unless the date for the Effective Date and conference is extended by mutual agreement of the Parties, at EPA's regional office at 75 Hawthorne Street, San Francisco, CA 94105-3901. The compliance conference shall be with the Regional Attorney, Project Coordinator and Associated Director of the Waste Management Division.
87. This conference is not an evidentiary hearing. It does not give Respondent a right to seek review of this Order. EPA will make no formal transcript of the conference. If a compliance conference is held, Respondent may present any evidence, arguments or comments regarding this Order, its applicability, any factual determinations on which the Order is based, the appropriateness of any action that Respondents are ordered to take, or any other relevant and material issue. Respondent is responsible for reducing any oral evidence, arguments, or comments to writing and submitting them to EPA within three (3) days following the conference.
88. Whether or not Respondent requests a conference, Respondents have the opportunity to provide EPA with information concerning the validity and necessity of this Order, and the applicability of this Order to Respondent. The EPA will add to the administrative record any relevant and material information that Respondent provides prior to the Effective Date of the Order.
89. Any information or documents provided under this section should be directed to Steve Wall, Project Coordinator Sunrise Mountain Landfill Site, U.S. EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105-3901.
90. Respondents may appear at the compliance conference in person or by an attorney or other representative.

XVIII. NOTICE OF INTENT TO COMPLY

91. Respondents shall provide, not later than ten (10) days after their receipt of this Order, written notice to Laurie Williams, Assistant Regional Counsel, at the address set forth above, stating Respondents intent to fully comply with the terms of this Order. If Respondents do not unequivocally commit to perform the Work required by this Order, Respondents shall be deemed, beginning on the Effective Date, to have violated the Order and to have failed or refused to comply with the Order. The absence of a response by EPA to the notice required by this paragraph shall not be deemed to be acceptance of any assertions that Respondents may make in their respective notices.

XIX. PENALTIES FOR NON-COMPLIANCE

92. Section 7003(b) of RCRA, 42 U.S.C. §6973(b), provides that “[a]ny person who willfully violates, or fails or refuses to comply with, any order of the Administrator under [RCRA §7003(a)] may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than [\$6,500] for each day in which such violation occurs or such failure to comply continues.” See Civil Monetary Penalty Inflation Adjustments, 69 Fed.Reg. 7126, Table 1 of Section 19.4 (February 13, 2004).

XX. NO FINAL AGENCY ACTION

93. Notwithstanding any other provision of this Order, no action or decision by EPA pursuant to the Order, including without limitation, decisions of the Regional Administrator, the Director of the Waste Management Division or his successor, or any authorized representative of EPA, shall constitute final agency action giving rise to any rights of judicial review prior to EPA's initiation of a judicial action for violation of the Order, which may include an action for penalties and/or an action to compel Respondents' compliance with the terms and conditions of this Order. In any action brought by EPA to enforce this Order, Respondents shall bear the burden of proving that EPA's action was arbitrary and capricious or not in accordance with law, or this Order.

XXI. EFFECTIVE DATE, TERMINATION, AND COMPUTATION OF TIME

94. This Order shall become effective 14 calendar days after it is signed by EPA (“Effective Date”). All times for performance of ordered activities shall be calculated from this Effective Date.
95. This Order shall terminate either (a) when EPA issues a notice of this Order's termination, or (b) on the date when a subsequent EPA Order or Court Order (including a Consent

Decree entered by a Court) that requires implementation of the tasks in Appendix A, the SOW, becomes effective, whichever occurs sooner. Respondents may request termination of this Order upon submitting a demonstration that they have appropriately expended \$6.7 million on tasks required pursuant to this Order.

XXII. MODIFICATION AND INTERPRETATION

96. This Order may be amended or modified by EPA. Such amendment shall be in writing and shall have as its effective date the date which is three (3) days after the date the amendment or modification is signed by EPA. If, after a compliance conference is held or relevant information is submitted, EPA determines that any element of this Order warrants modification or revocation, EPA will modify or revoke the Order in writing, file the modifications or revocation with the Regional Hearing Clerk and issue a copy to the Respondents.
97. Except as otherwise provided in this Order, no modification to or revocation of this Order shall be effective unless and until it is issued in writing by EPA and filed with the Regional Hearing Clerk.
98. EPA's Project Coordinator may agree to changes in the scheduling of Work. Any such changes must be requested in writing by Respondents and be approved in writing by EPA's Project Coordinator. Changes to the schedule for the Work do not need to be filed with the Regional Hearing Clerk and will be effective when signed or sent by EPA's Project Coordinator. If and when such changes are approved, they will normally be communicated by email.
99. No informal advice, guidance, suggestions or comments by EPA regarding reports, plans, specifications, schedules and any other writing submitted by Respondents will be construed as an amendment or modification of the Order.
100. The headings in this Order are for convenience of reference only and shall not affect interpretation of this Order.
101. All plans, reports, or other documents submitted under any section of this Order shall, upon approval by EPA, be incorporated by reference into this Order as if fully set forth herein.

XXIII. NOTICE TO THE STATE

102. Notice of issuance of the Order has been given to the State of Nevada pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

XXIV. ADMINISTRATIVE RECORD

103. The Administrative Record supporting this Order shall be available for public review at two locations:


EPA Region IX's Superfund Records Center, 95 Hawthorne Street, 4th Floor, San Francisco, California, 94105. (In order to make arrangements to view the Administrative Record in San Francisco, please contact EPA's Project Coordinator, Steve Wall at (415) 972-3381 or by email at wall.steve@epa.gov.)

BLM's Field Office, 4701 North Torrey Pines Drive, Las Vegas, NV 89130-2301. (In order to view the Administrative Record in Las Vegas, please contact Mike Moran of BLM at (702) 515-5053 or by email at mmoran@nv.blm.gov.)

IT IS SO ORDERED.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
REGION IX**

6/6/08
DATE


JEFF SCOTT, Director
Waste Management Division
EPA Region IX